IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 02.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
and
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

W.P.No.24443 of 2001

1. The Director of Sericulture,
   Department of Sericulture,
   249, 2nd Agraharam,
   Salem 636 001.

2. The Regional Deputy Director of
   Sericulture,
   Dharmapuri.

3. The Enquiry Officer/
   Assistant Director of Sericulture
   (Grainage), Krishnagiri .. Petitioners

Versus

1. K.S.Ramamurthy
   Asst. Inspector of Sericulture
   O/o The Assistant Director
   Sericulture,
   Alangayam Koottu Road,
   Khaderpet, Anna Salai,
   Vaniyambadi 635 751.

2. The Registrar,
   Tamil Nadu Administrative Tribunal,
   High Court Buildings,
   Chennai 104. .. Respondents

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Writ Petition filed under Article 226 of The Constitution of India to issue a Writ of certiorari to call for the records relating to the order in O.A.No1331 of 1997 dated 27.9.2001 on the file of the Tamil Nadu Administrative Tribunal, Chennai, the second respondent herein and quash the same.

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For petitioners : Mr.M.Dhandapani,Spl.G.P.
For respondents : No appearance

O R D E R

(Order of the Court was made by F.M.IBRAHIM KALIFULLA,J.)

Though notice was served on the first respondent, there was no representation either in person or through counsel. When the writ petition was last posted on 28.06.2007, we directed the learned Special Government Pleader to verify as to whether the first respondent is still in service. Learned Special Government Pleader ascertained the said fact and represented that the first respondent is working as Assistant Inspector of Sericulture in the Office of the Assistant Director of Sericulture, Vaniyambadi. In spite of service of notice, the first respondent has not shown any interest to defend himself and hence we proceed to dispose of the writ petition on merits.

2.The petitioners are the Director of Sericulture, Salem, the Regional Deputy Director of Sericulture, Dharmapuri and the Assistant Director of Sericulture, Krishnagiri. The third petitioner is stated to be the Enquiry Officer appointed to enquire into the charges levelled against the first respondent. While the first respondent was working as Assistant Inspector of Sericulture in Pennagaram, Dharmapuri District between 01.07.1990 and 06.07.1993, it was alleged that he misappropriated the funds of the department by drawing a larger amount but disbursing a smaller amount towards purchase of cocoons from the farmers. The total misappropriated amount was stated to be a sum of Rs.58,770.40. He was issued with a charge memo dated 31.05.1994. He was also placed under suspension, pending disciplinary action by order dated 06.09.1993. Apart from the issuance of the charge memo, a criminal complaint was also lodged against the first respondent before the Sub Inspector of Police, D.C.B. Dharmapuri. A charge sheet was also laid before the Judicial Magistrate, Palacode in C.C.No.127 of 1995. In the above stated circumstances, the first respondent approached the State Administrative Tribunal challenging the charge sheet dated 31.05.1994 in O.A.No.1331 of 1997. The Tribunal held that in view of the pendency of the criminal case, the departmental enquiry cannot go on. Accordingly, the Tribunal directed the third petitioner to stay the enquiry proceedings till the criminal case is disposed of and thereafter, proceed according to the decision of the criminal Court. Challenging the said order of the Tribunal, the petitioners have come forward with this writ petition.

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3. The sole contention of the first respondent before the Tribunal was that if he is allowed to participate in the enquiry, he would be seriously prejudiced if he were to disclose his evidence as that may have repercussion in the criminal proceedings. The said stand of the first respondent weighed with the Tribunal which has passed the order impugned in this writ petition.

4. Mr.M.Dhandapani, learned Special Government Pleader appearing for the petitioners brought to our notice the recent decision of the Hon'ble Supreme Court reported in 2007(3)CTC 211 [NOIDA Entrepreneurs Assn. vs. NOIDA and others]. The Hon'ble Supreme Court after referring to all the earlier cases on this question has stated the legal position as under in paragraph No.16:

> "The purpose of Departmental Enquiry and of prosecution is two different and distinct aspects. The Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The Departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the Disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guideline as inflexible rules in which the Departmental proceedings may or may not be stayed pending trial in Criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with Departmental enquiry and trial of a Criminal case unless the charge in the Criminal Trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under Criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act, 1872 (in short the 'Evidence Act'). Converse is the case of Departmental enquiry. The enquiry in a Departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled

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legal position. Under these circumstances, what is required to be seen is whether the Department enquiry would seriously prejudice the delinquent in his defence at the trial in a Criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances."

5. Further in the case on hand, while entertaining this writ petition, an order of interim stay of the Tribunal's order was granted in WPMP No.36175 of 2001. Subsequently, the said interim stay was made absolute by order dated 24.04.2002. Nevertheless, it is stated by the learned Special Government Pleader that the enquiry has not yet been proceeded with awaiting the outcome of this writ petition.

6. We bestowed our serious consideration to the facts involved as well as the law set down by the Hon'ble Supreme Court in the above referred to judgment. The charge against the petitioner is that he misappropriated a sum of Rs.58,770.40. Therefore at the outset, it will have to be stated that the said charge does not involve any complicated question of facts and law in order to state that the disciplinary proceedings should await the outcome of the criminal case. That apart, in the decision referred to above, an earlier decision of the Supreme Court reported in 1999(3)SCC 679 [M.Paul Anthony vs. Bharat Gold Mines Ltd.] has also been referred to. As many as five conclusions have been set out in Paul Anthony's case and conclusion Nos.1, 4 and 5 are relevant for our present purpose. In conclusion No.1, the Hon'ble Supreme Court made it clear that the departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted as such. In conclusion No.4, the Hon'ble Supreme Court made it clear that the departmental proceedings cannot be unduly delayed. Again in conclusion No.5 the Hon'ble Supreme Court has stated that if the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date.

7. Therefore, applying the above provisions set down by the Hon'ble Supreme Court to the case on hand, we are convinced that the departmental proceedings initiated against the first respondent cannot be delayed further awaiting the outcome of the criminal proceedings. Moreover, as stated by us earlier, there were no complicated question of law or facts involved in the alleged charge of misappropriation levelled against the first respondent. Unfortunately, the Tribunal has not considered any of the above factors while passing the order impugned in this writ petition. We are therefore, obliged to interfere with the same and the writ petition

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stands allowed. The impugned order of the Tribunal is set aside. The petitioners are directed to proceed with the enquiry in accordance with law and conclude the same expeditiously, preferably within three months from the date of receipt of a copy of this order. No costs.

gms

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Director of Sericulture,
   Department of Sericulture,
   249, 2nd Agraharam, Salem 636 001.

2. The Regional Deputy Director of
   Sericulture, Dharmapuri.

3. The Enquiry Officer/
   Assistant Director of Sericulture
   (Grainage), Krishnagiri.

+ One cc to Govt Pleader sR 39659

NSM (co)

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